



# City of Norfolk

Office of the City Manager

C: ACM Stein

September 19, 2006

To the Honorable Council  
City of Norfolk, Virginia

Re: Ordinance to Approve an Encroachment Agreement with City Center Plume Associates, L. L. C. for Outdoor Dining at Blue Plate Restaurant at 261 E. Plume Street

Ladies and Gentlemen:

I. **Recommended Action:** Adopt ordinance.

II. **Overview**

This agenda item is an Encroachment Agreement that authorizes City Center Plume Associates, L. L. C and Blue Plate Restaurant to encroach into an area encompassing approximately 63 square feet of the right-of-way along Plume Street. The purpose of the encroachment is to allow Blue Plate to continue to have outdoor dining in conjunction with the operation of the restaurant.

III. **Analysis**

A. **General**

Norfolk City Code, Section 42-10, requires all encroachments into the rights-of-way to be approved by City Council. An encroachment is an approved object or structure that encroaches into a City of Norfolk right of way.

The City originally entered into an encroachment agreement with BJCL, Inc on July 31, 2001. The encroachment allowed Plume Street Grill to have outdoor dining on Plume Street. The improvements located in the encroachment area were previously approved by the Norfolk Design Review Committee and the Planning Commission. When that restaurant entity ceased to operate in that location, the City agreed to the assignment of the encroachment agreement in order to make outdoor dining available to a future tenant. The term of this permission to encroach is no longer than five (5) years to commence August 15, 2006, and terminating August 14, 2011. The permission is subject to the right of revocation by the City Council.

- B. Fiscal  
By the terms of this Encroachment Agreement, City Center Plume Associates will pay an annual rent to the City of Norfolk of \$328.20.
- C. Environmental  
There are no environmental issues related to the area of the encroachment.
- D. Community Outreach/Notification  
Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

#### IV. Conclusion

This Encroachment Agreement between the City of Norfolk and City Center Plume Associates, LLC will allow Blue Plate Restaurant to encroach into Plume Street in order to provide an outdoor dining opportunity. Therefore, it is recommended that the City Council adopt the attached ordinance, which authorizes the City Manager to execute the Encroachment Agreement.

Respectfully submitted,



Regina V.K. Williams  
City Manager

#### Coordination/Outreach

This letter has been coordinated with the Office of Real Estate and the City Attorney's Office.

Form and Correctness Approved: <sup>BXP</sup>By Nathan Seaman  
Office of the City Attorney

NORFOLK, VIRGINIA

Contents Approved:

By John M. Kuff  
DEPT. PUBLIC WORKS**ORDINANCE No.**

AN ORDINANCE GRANTING PERMISSION TO CITY CENTER PLUME ASSOCIATES, L.L.C. TO ENCROACH INTO THE RIGHT-OF-WAY OF PLUME STREET AT 216 E. PLUME STREET FOR THE PURPOSE OF OUTDOOR DINING IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ENCROACHMENT AGREEMENT.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That permission is hereby granted to City Center Plume Associates, L.L.C., to encroach into the right-of-way of Plume Street, such encroachment area measuring no more than 3.8 feet by 16.5 feet, for the purpose of outdoor dining in accordance with the terms and conditions of the Encroachment Agreement, a copy of which is attached to and made a part hereof as Exhibit A.

Section 2:- That the City Manager or other proper officers of the City are authorized to execute said Encroachment Agreement on behalf of the City.

Section 3:- That the City Manager is further authorized to correct, revise or amend the Encroachment Agreement as she may deem advisable to carry out the intentions of the Council.

Section 4:- That this ordinance shall be in effect from and after its adoption.

## ENCROACHMENT AGREEMENT

This Encroachment Agreement (hereinafter "Agreement") is made and entered into this \_\_\_\_\_ day of August, 2006, by and between the City of Norfolk, a municipal corporation of the Commonwealth of Virginia (hereinafter "City"), and City Center Plume Associates, L.L.C. (hereinafter "CCPA").

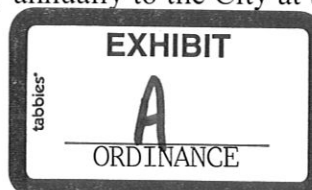
### WITNESSETH:

1. **ENCROACHMENT AREA.** City hereby grants permission to CCPA to encroach into the right of way of Plume Street at 216 E. Plume Street, an area measuring 3.8' by 16.5' (approximately 63 square feet), as shown on Exhibit A attached hereto, for the purpose of outdoor dining and no other purpose.

2. **USE.** CCPA shall be permitted to occupy the Encroachment Area for outdoor dining uses in conjunction with the operation of the Blue Plate Restaurant.

3. **TERM; TERMINATION.** The term of the permission to encroach granted hereby shall be no longer than five (5) years and shall commence on August 15, 2006, or upon the effective date of any authorizing ordinance, whichever shall last occur, and shall terminate on August 14, 2011. However, it is expressly understood that the permission granted hereby is subject to the right of revocation by the City Council at any time and in their sole discretion, and that in the event of such revocation, CCPA, or its successors or assigns, if requested by City, shall remove the encroaching structures and shall cease using the Encroachment Area for outdoor dining.

4. **COMPENSATION.** As compensation for the privilege of encroaching into the right of way, CCPA will pay annually to the City at the address designated hereinafter in



this paragraph, the sum of \$328.20 (Three Hundred Twenty Eight Dollars and 20/100) in monthly installments of \$27.35 per month beginning on the first day of August, 2006 or the day the ordinance is effective whichever is later. The compensation shall be paid by check made payable to the Norfolk City Treasurer and sent to the Office of Real Estate, Room 306, City Hall Building, 810 Union Street, Norfolk, Virginia 23510.

5. **LATE FEES.** For any late payments received 15 days after the first of each month, CCPA shall pay a late fee of five percent (5%) of the amount not paid when due.

6. **UTILITIES.** City shall not be responsible for utilities of any type used within the Encroachment Area. CCPA shall pay all utility meter and utility service charges for all utilities, including but not limited to gas, electricity, water, telephone, sewer, etc., necessary to serve the Encroachment Area.

7. **REPAIRS.** CCPA shall keep and maintain the Encroachment Area in good and complete state of repair and condition, except for ordinary wear and tear. CCPA shall make all repairs and replacements of every kind to the sidewalks and paved areas of the Encroachment Area in order to preserve and maintain the condition of the Encroachment Area. All such repairs and maintenance shall be performed in a good and workmanlike manner, be at least equal in quality and usefulness to the original components, and not diminish the overall value of the Encroachment Area.

8. **REQUIREMENTS OF PUBLIC LAWS.** CCPA shall suffer no waste or injury to the Encroachment Area and shall comply with all federal, state and municipal laws, ordinances and regulations applicable to the structure, use and occupancy of the Encroachment Area. In addition, CCPA shall effect the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the Encroachment Area.



9. **CITY'S RIGHT TO ENTER AND CURE.** City shall retain the right to enter upon the Encroachment Area at any time for the purpose of inspecting the Encroachment Area, ascertaining compliance with this Agreement, and making any repairs which City deems necessary as a consequence of any failure of CCPA to meet their obligations under this Agreement. The cost of any such repairs shall be deemed additional compensation payable on demand. Any entry upon the Encroachment Area or cure and repair shall be accomplished by City at reasonable times and in the exercise of reasonable discretion by the City. The making of any repairs by City shall not constitute a waiver by City of any right or remedy upon CCPA default in making repairs.

10. **NOTICE.** Any notice shall be in writing and shall be delivered by hand or sent by United States Registered or Certified Mail, postage prepaid, addressed as follows:

City:

Office of Real Estate  
City Hall Building  
810 Union Street  
Norfolk, Virginia 23510

CCPA:

Morgan Real Estate Group  
C/O Michelle Jones  
207 Granby St, Ste. 300  
Norfolk, Virginia 23510

With copies to:

City Attorney  
City Hall Building – Room 908  
810 Union Street  
Norfolk, Virginia 23510

Either party hereto may change its address to which said notice shall be delivered or mailed by giving notice of such change as provided above. Notice shall be deemed given when delivered (if delivered by hand) or when postmarked (if sent properly by mail).

11. **ENVIRONMENTAL MATTERS.** CCPA agrees that it will not introduce onto the Encroachment Area any toxic, hazardous or dangerous materials unless such material is stored, safeguarded, or used in accordance with applicable laws and regulations. CCPA will not allow any air, water or noise pollution to occur in the Encroachment Area. CCPA hereby agrees to use and occupy the Encroachment Area in a safe and reasonable manner and in accordance with applicable law.

City in turn agrees that CCPA shall not be responsible or assume liability for environmental conditions existing on or about the Encroachment Area prior to CCPA's occupancy thereof under this Agreement.

12. **DESTRUCTION.** If the encroaching structures or any part thereof shall be damaged or destroyed by fire, lightning, vandalism, or by any other casualty or cause, the permission granted hereby shall be automatically terminated unless the parties agree, in writing, to continue to permit the encroachments granted by this Agreement.

13. **NON-LIABILITY OF CITY.** City shall not be liable for any damage or injury which may be sustained by CCPA or any other person as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, steam, gas, sewer, waste or spoil pipes, roof, drains, leaders, gutters, valleys, downspouts or the like, or of the electrical, ventilation, air conditioning, gas, power, conveyor, refrigeration, sprinkler, heating or other systems, elevators or hoisting equipment, if any, upon the Encroachment Area, or by reason of the elements; or resulting from acts, conduct or omissions on the part of CCPA, or their agents, employees, guests, licensees, invitees, assignees or successors, or on the part of any other person or entity.

14. **REMOVAL OF SNOW.** CCPA agrees to remove or cause to be removed, as the need for the same arises, snow and ice from the Encroachment Area.

15. **ALTERATIONS.** CCPA covenants and agrees that it will not make any improvements, changes installations, renovations, additions or alterations in and about the Encroachment Area without the prior written consent of the City other than those approved by Norfolk's Design Review Committee and Norfolk's Planning Commission. If CCPA installs or makes any improvements, additions, installations, renovations, changes on or to the Encroachment Area with the approval of City, CCPA hereby agrees to remove, if requested by City, any improvements, additions, installations, renovations, changes on or to the Encroachment Area upon termination of this Agreement. In the event CCPA fails to remove and is requested to do so by City, then City may remove the improvements, additions, installations, renovations, changes and bill CCPA for the cost of such removal.

16. **ASSIGNMENT AND SUBLETTING.** City and CCPA agree that the permission to encroach granted hereby may not be assigned by CCPA without written approval from Norfolk's City Manager.

17. **SURRENDER BY CCPA.** CCPA will surrender possession of the Encroachment Area to City and remove all goods and chattels and other personal property therefrom upon termination of the permission granted hereby. CCPA shall return the Encroachment Area to the City in as good order and condition as they were at the beginning of CCPA's use of the encroachment area, reasonable wear and tear excepted. If CCPA fails to remove and has been requested to remove all items from the Encroachment Area upon termination hereof, City is authorized to remove and dispose of any such personal property and CCPA shall be liable to City for the cost of any removal and disposal.



18.     **INSURANCE.** CCPA shall maintain in full force and effect a combined single limit policy of bodily injury, death and property damage insurance that coincides with the existing policy for CCPA of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate insuring City and CCPA against all liability arising out of the use, occupancy, or maintenance of the Encroachment Area and appurtenant areas, which policy shall be endorsed as primary insurance in favor of City naming the City, its officers, employees, agents and representatives as additional named insured, as evidenced by a Certificate of Insurance provided to the City within thirty (30) days after adoption of this Agreement. All insurance policies and certificates shall provide for thirty (30) days advance notice in writing to the City Manager if the insurance is cancelled or modified.

19.     **FIXTURES.** City covenants and agrees that no part of the improvement constructed, erected or placed by CCPA in the Encroachment Area shall be or become, or be considered as being, affixed to or a part of the right of way, and any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of City and CCPA to covenant and agree that all improvements of every kind and nature constructed, erected or placed by CCPA in the Encroachment Area shall be and remain the property of CCPA.

20.     **ENVIRONMENTAL COMPLIANCE.**

(a) For purposes of this section:

(i) “Hazardous Substances” include any pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Resource and Conservation Recovery Act (42 U.S.C. SS6901 et seq.) (IIRCRAII), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. SS9601 et seq.) (CERCLAII) or any other federal, state, or local environmental law, ordinance, rule or regulation.

(ii) “Release” means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, disposing or dumping.

(iii) “Notice” means any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from any authority of the Commonwealth of Virginia, the United States Environmental Protection Agency (USEPA) or other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional act or omission resulting or which may result in the Release of Hazardous Substances into the waters or onto the lands of the Commonwealth of Virginia, or into waters outside the jurisdiction of the Commonwealth of Virginia or into the “environment,” as such terms are defined in CERCLA. “Notice” shall include the imposition of any lien on any real property, personal property or revenues of the Tenant, including but not limited to the Tenant’s interest in the Leased Premises or any of Tenant’s property located thereon, or any violation of federal, state or local environmental laws, ordinances, rules, regulations, governmental actions, orders or permits, or any knowledge, after due inquiry and investigation, or any facts which could give rise to any of the above.

(b) To the extent that CCPA may be permitted under applicable law to use the Encroachment Area for the generating, manufacture, refining, transporting, treatment, storage, handling, disposal, transfer or processing of Hazardous Substances, solid wastes or other dangerous or toxic substances, CCPA shall insure that said use shall be conducted at all times strictly in accordance with applicable statutes, ordinances and governmental rules and regulations. CCPA shall not cause or permit, as a result of any intentional or unintentional act or omission, a Release of Hazardous Substances in the Encroachment Area. If any such intentional or unintentional act or omission causes a Release of Hazardous Substance in the Encroachment

Area, CCPA shall promptly clean up and remediate such Release in accordance with the applicable federal, state and local regulations and to the reasonable satisfaction of City.

(c) CCPA shall comply with all applicable federal, state and local environmental laws, ordinances, rules and regulations, and shall obtain and comply with any and all permits required thereunder or any successor or new environmental laws. Upon the receipt of any Notice, CCPA shall notify City promptly in writing, detailing all relevant facts and circumstances relating to the Notice.

(d) The requirements of this Section 20 shall apply to any successor in interest to CCPA, whether due to merger, sale of assets or other business combination or change of control.

(e) CCPA hereby agrees to defend (with counsel satisfactory to City) and indemnify and hold City harmless from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, reasonable cleanup costs and attorney's fees arising under this indemnity) which may arise directly or indirectly from any use or Release of Hazardous Substances in the Encroachment Area and losses and claims against City resulting from CCPA's failure to comply strictly with the provisions of this Section 20. The provisions of this Section 20 shall survive the termination of this permission granted by this Agreement.

21. **LIENS OR ENCUMBRANCES.** If because of any act or omission of CCPA, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against any portion of the Encroachment Area, CCPA shall, at its own cost and expense, cause the same to be discharged of record or bonded within ninety (90) days after written notice from the City to CCPA of the filing thereof, and CCPA shall have the right to contest the validity of such lien if it so chooses.

22. **APPLICABLE LAW.** The permission granted by this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Any suit or legal proceeding relating to permission granted hereby shall be brought only in the state or federal courts located in the Eastern District of Virginia.

23. **WAIVER OF TRIAL BY JURY.** To the extent permitted by law, City and CCPA mutually waive their rights to trial by jury in any action, proceeding or counterclaim brought by either party against the other with respect to any dispute or claim arising out of the permission to encroach granted to CCPA by this agreement.

24. **OTHER REQUIREMENTS.** CCPA agrees that use of the Encroachment Area shall be subject to the following:

(a) CCPA shall comply with the City of Norfolk's "Downtown Outdoor Dining Policy" attached hereto as Exhibit "B".

(b) CCPA shall comply with all requirements of the City of Norfolk Department of Public Health with respect to the use of the Encroachment Area.

(c) The use of the Encroachment Area shall be subject to the jurisdiction and review of the City of Norfolk's Design Review Committee.

(d) CCPA's use of the Encroachment Area shall not interfere with any water meters or sewer cleanouts.

(e) Table and chairs will be brought inside daily

(f) A trash can compatible in design and style with the table and chairs will be provided for the outdoor dining, and trash shall be removed daily.

(g) Tables, chairs and planters will be arranged according to plan approved by Norfolk's Design Review Committee.

**IN WITNESS WHEREOF**, Parties have executed or have caused this Encroachment Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

**THE CITY OF NORFOLK**

By: \_\_\_\_\_  
City Manager

ATTEST

\_\_\_\_\_  
City Clerk

APPROVED AS TO CONTENTS:

\_\_\_\_\_  
Manager of Real Estate

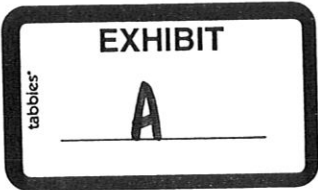
APPROVED AS TO FORM  
AND CORRECTNESS

\_\_\_\_\_  
Deputy City Attorney

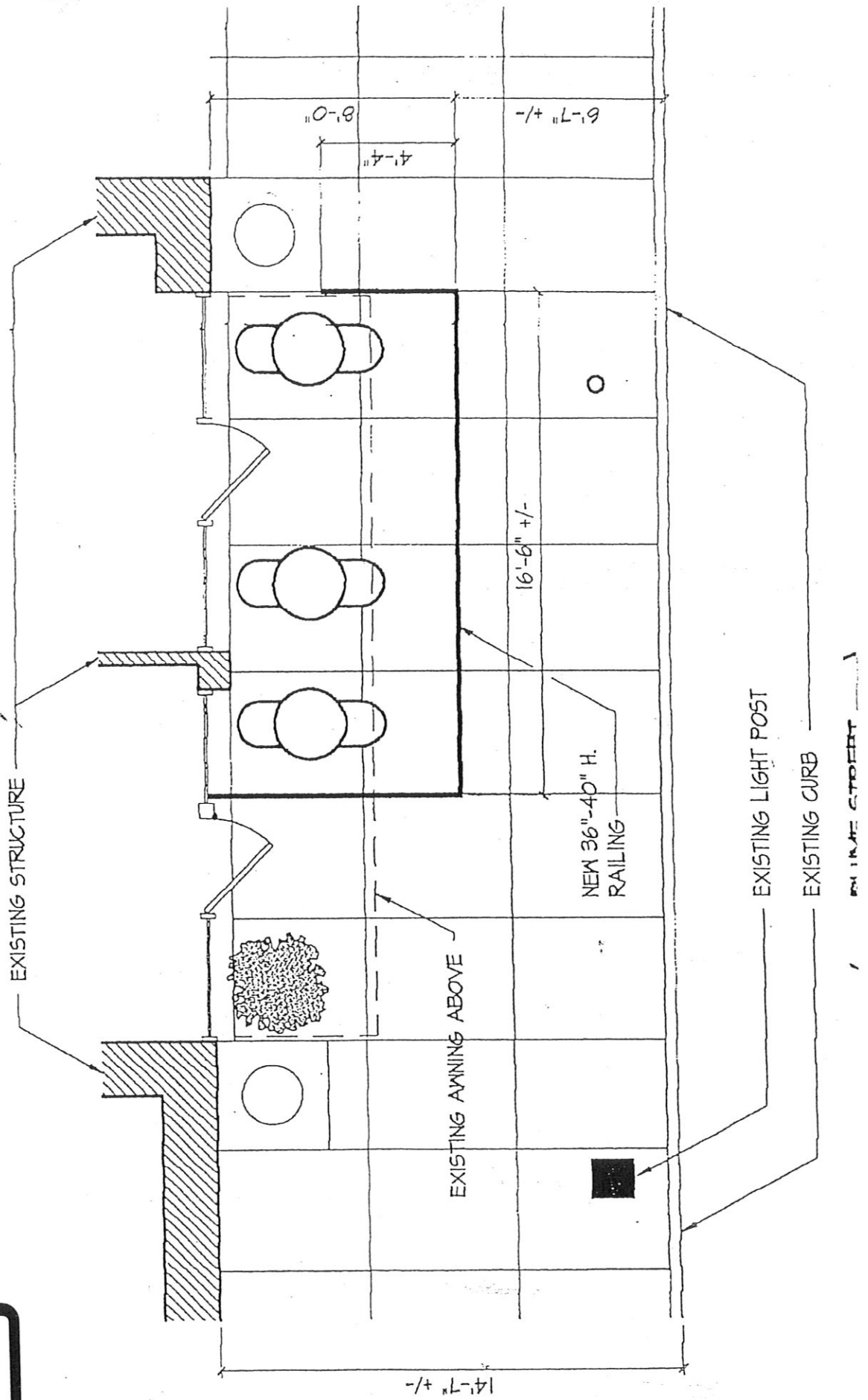
**CITY CENTER PLUME ASSOCIATES, L.L.C.**

By: \_\_\_\_\_

Title: \_\_\_\_\_



Attached Plans And Materials For  
215 E. Plumc St.  
Approved By Portland Design Review  
Committee 4/23/61 and City  
Planning Commission 4/26/61  
*[Signature]*  
Executive Secretary





## DOWNTOWN OUTDOOR DINING POLICY

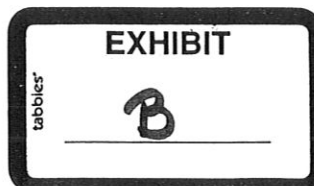
Downtown Norfolk is becoming established as the unique center of the region. Its core is developed with a dynamic mix of office, commercial, retail, hotel, convention, and entertainment uses. The success of the waterfront should extend into the Downtown core, and this can occur by locating a range of restaurant, entertainment, and retail activities along the street facades. Downtown for the purpose of this policy will be all the Downtown Zoning District, D-1, D-2, D-3, and D-4.

Uses should be encouraged to extend to the sidewalk. The great cities of the world, even those with a less pleasant climate than Norfolk's tend to have sidewalk uses such as dining areas and cafes. As we re-establish downtown Norfolk, the more visible activities there are the better.

Permitting outdoor dining in Downtown will be an asset to the area and consistent with the goals of the General Plan and of the Downtown Plan.

The following guidelines will be for use Downtown:

- 1) that the design of the outdoor dining area is compatible with the building with which it is associated and with others on the street block face and that the dining enclosure is understated and compliments the architecture of the building;
- 2) that the dining area shall not reduce the passable sidewalk area to less than 6 feet between any obstruction (such as tree wells, light fixtures, signs, etc.) and the outer edge of the outdoor dining enclosure;
- 3) that the dining area will be an installation designed so that posts, awnings, chairs, tables, planters, etc. can be removed and stored elsewhere during off-season; or extended periods of non-use exceeding 30 days; off-season for the purpose of this policy shall be November 1 - March 31; whether a specific outdoor dining area should be removed during the off-season or remain open will be addressed on a case by case basis during the design review process;
- 4) that signs on any form of covering for the dining area (awnings or umbrellas) are acceptable as long as they do not exceed the maximum permissible under the Zoning Ordinance; the signs, however, shall advertise only the establishment and not any specific product or service;
- 5) that the outdoor dining area shall be maintained in a usable state and chairs, tables, and other appurtenances shall not be stacked or stored outdoors;
- 6) that all initial physical improvements to the outdoor dining area, including signs, and any subsequent changes to the physical improvements, shall be approved by the Design Review Committee and City Planning Commission;
- 7) that the restaurant owner agrees to maintain in good condition all appurtenances placed in the City's right-of-way or on City property and must protect the sidewalk finishes from damage; and



- 8) that the applicant acknowledges that he/she must adhere to all terms and provisions in the leases with the City.

All plans for outdoor dining areas will follow the usual review and approval process for encroachments except that the final recommendations will be forwarded to the Department of Development for preparation of a lease to be executed between the City and the applicant.

It is noted that other conditions or requirements may be imposed by other City agencies and/or by the Design Review Committee and City Planning Commission as part of the review process.

- Adopted by the Norfolk Design Review Committee, December 7, 1998
- Adopted by the Norfolk City Planning Commission, December 10, 1998